

September 2003 ARRC Meeting

Summary of Issues

The October meeting of the Administrative Rules Review Committee will be on Monday, October 13th 2003 in Statehouse Room #116. Special reviews now include:

HUMAN SERVICES: Advanced Registered Nurse Practitioners. At issue is which ARNPs are eligible to serve as case managers.

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ADMINISTRATIVE SERVICES DEPARTMENT, Bidding procedures, 8-20-03 IAB, ARC 2708B, NOTICE.

BACKGROUND: The department proposes to consolidate purchasing rules from the old department of general services into one chapter. The rules apply to the purchase of goods and services of general use by executive branch agencies other than those exempted by law. Generally, the proposed rules do not make substantive changes to state policy for competitive procurement methods, standard contract requirements, agency guidelines, or vendor responsibilities and rights.

COMMENT: These revisions detail a variety of competitive selections procedures. Committee members voiced some concern over vendor prequalification. Under this concept a notice would establish the various terms, conditions and qualifications and potential vendors would be invited to prequalify for future competition in that area. Committee members were concerned that process could ultimately limit competition, by excluding potential vendors who had not pre-qualified. Department representatives noted that vendors would have ample opportunities to prequalify. Committee members also had some concerns with sole-source procurement. Representatives assured committee members this only occurred in special or emergency situation.

ACTION: No action taken.

EDUCATION DEPARTMENT, Early school dismissal due to heat, selective review.

BACKGROUND: In essence Iowa Code §279.10(1) provides that elementary and secondary school shall begin after Labor Day. The local districts may request a waiver, based on a local determination that the statutory starting date would have a “significant negative educational impact.”

COMMENTARY: The Department of Educations maintains that school starts are a matter of local control and does not evaluate the substance of a waiver request. To be approved a waiver request must have had a local public hearing a vote by the local school board. Additionally, department representatives noted that dwindling staff numbers would make it very difficult to evaluate the substance of each request. Over 350 of Iowa’s 370 districts request and receive the waiver. A number a reasons were cited in support of early school starts. These included the need to have in-service teacher training spread throughout the school year, the desire to complete final exams prior to the Christmas break, parents desire for a longer Spring holiday and the need to coordinate the end of the school year with Summer schedules of colleges and universities. It was also noted that the development of a school calendar, and fitting in all the required components, required a great deal of planning and effort.

Several committee members opposed the concept of blanket waivers, contending that the statutory scheme contemplated a case-by-case review and approval of applications. Opponents also expressed concern that repeated early dismissals because of heat was chipping away at the 180 day school requirement. Other committee members supported the current process; in support of the concept of local control, they noted that the early dates were requested by popularly elected school boards and made subject to a local public hearing. Supporters also stated that eventually the air conditioning of schools would minimize and ultimately eliminate the problem.

ACTION: No action taken.

GROW IOWA VALUES BOARD, Financial assistance, 08/20/03 IAB, ARC 2698B, EMERGENCY.

BACKGROUND: House File 692, Section 84 has created a Grow Iowa Values Fund; §83 of the Act sets eight performance standards this economic development program must meet. These “emergency” adopted and implemented rules are temporary and will expire October 31st; they will be replaced by a set of permanent rules, to be published in September.

COMMENTARY: Board representatives noted that the permanent rules, in order to replace the temporary rules, would be “filed emergency after notice”. Under this concept the notice and public participation component of the rulemaking process is completed, but the final publication waiting period is waived. Committee members did not object to this process. Some members were concerned that an emphasis on high wage jobs could unfairly limit projects in rural Iowa, where the term “high wage” would have a very different meaning from the definition in urban areas. In response it was noted that high wage jobs were what Iowa needed, although the meaning of that term might differ depending on the geographic area. Board representatives stated that the phrase “high wage” itself has been removed from the new proposals. Members had some concern over the quorum requirement of the board. Under the Act a majority—six members—constitute a quorum. Under the proposed rules, a vote would carry by a majority vote of those present. Members were concerned that in cases where only six members were present, a measure could be passed with as little as four votes. Committee members also emphasized the need to have the “due diligence” committee carefully evaluate applications.

ACTION: No action, additional review in October.

ECONOMIC DEVELOPMENT DEPARTMENT, Value added agricultural processes, 08-06-03 IAB, ARC 2674B, NOTICE.

BACKGROUND: House File 692 has revised the current statutory provisions set out in Iowa Code Chapter 15E for value-added agricultural products.

COMMENTARY: Under the Act, in awarding financial assistance the department is to “prefer” producer-owned, value-added businesses. Committee members understood the term “producer owned” means holding an equity interest, but members were unsure what level, if any, of interest was required; both the Act and proposed rules were silent on this point. Members also inquired whether renewable fuel production as contemplated in the

Act would embrace solar energy; under the terms of the Act renewable was actually limited to organic compounds. Some concern was also expressed that the phrase “scientifically enhanced plants or animals” could be construed to include genetically altered crops.

ACTION: No action taken.

ENVIRONMENTAL PROTECTION COMMISSION, Concrete manure structures, 08-20-09 IAB, ARC 2716B, NOTICE.

BACKGROUND: 2002 Iowa Acts Chapter 1137 call for construction standards for manure storage structures. Rules are currently in place in 567 IAC rule 65.15; the commission now proposes an upgrade to those provisions, applicable to new structures after January 1st, 2004.

COMMENTARY: Commission representatives distributed photographs of leaking concrete structures, citing these as evidence of the need for the regulation of construction techniques. The new rules add rebar requirements and increase the thickness of the floor. In Karst formation areas the bottom of the structure must be five feet above limestone, dolomite, or other soluble rock, unless the structure was designed by a professional engineer or by a Natural Resources Conservation Service (NRCS) staff person who certifies the structural integrity of the structure. Industry representatives did not oppose these proposals, but stated a desire for more review to ensure that additional standards a workable and necessary.

ACTION: No action taken.

HUMAN SERVICES DEPARTMENT, Medipass patient managers, 07-03-09 IAB, ARC 2583B, emergency.

BACKGROUND: These rules, relating to the eligibility to serve as a patient manager, were adopted pursuant to HF 479. The Act states that advanced registered nurse practitioners (ARNPs) shall be regarded as approved providers of health care services, including primary care, for purposes of managed care or prepaid services contracts under the medical assistance program.

COMMENTARY: These rules were initially reviewed in August, In response to concerns made at that time, the department has agreed to strike any reference to a requirement that an ARNP be in an independent practice. This will immediate allow the three specific types of ARNPs to currently serve as MediPASS patient managers (i.e. family and pediatric ARNPs, and certified nurse midwives). A subsequent rulemaking will allow a variety of ARNPs who are certified in practice areas recognized by the Iowa Board of Nursing to enroll under regular Medicaid and receive provider numbers.

ARNP advocates protested that the failure to allow ARNPs’ to bill directly was in violation of federal requirements and the corrections should be adopted on an “emergency” basis. Committee members declined to support this position, noting the traditional importance attached to public participation. Members did agree to place this item on the October agendum to ensure continued progress with this rulemaking.

ACTION: No action taken, scheduled for additional review in October.

IOWA FINANCE AUTHORITY, 2004 tax credit program, 09/03/03 IAB, ARC 2719B, ADOPTED.

BACKGROUND: Iowa law authorizes the Authority to issue tax credits as an incentive to developers for construction or rehabilitation of low income housing. Each year the Authority updates the program for the current fiscal year.

COMMENTARY: The 2004 amendments eliminates the requirement that the developer commission a market study justifying the need for the project, in favor of an IFA commissioned study. The developer-paid fee for this study is \$4500, which is an average of the fees charged over the past. Board representatives stated that any developer-commissioned need study invariably found that a need existed; commission representatives felt that a more independent analysis was needed. Committee members expressed concern with the use of an “average” fee; they expressed concern that needs studies in rural Iowa, where the projects were smaller, cost less than projects in an urban setting. Nevertheless, under the rule both would pay the same fee, regardless of the cost.

ACTION: General referral.

PUBLIC HEALTH DEPARTMENT, Substances used for workplace drug testing, 641 IAC Chapter 12, SELECTIVE.

BACKGROUND: Iowa Code Chapter 730 relates to workplace drug testing; in part it provides that the Department of Public Health can determine the appropriate samples to be used for those tests. At issue is whether the use of saliva should be added to that list. This issue was initially reviewed in July.

COMMENTARY: Department representatives continue to evaluate information concern the accuracy saliva testing. Department representatives noted that federal rulemaking is a possibility in this area. There was mixed reaction to the proposal, with some presenters favoring the use of saliva as a less intrusive substitute for urine, while others felt the current tests were adequate. Some committee members opposed any change in rules, contending that any change should come from the statute itself.

ACTION: No action.

PUBLIC HEALTH DEPARTMENT, Do-not-resuscitate orders, 08-06-03 IAB, ARC 2682B, adopted.

BACKGROUND: Since 1985 Iowa Code Chapter 144A has set out general protocols for use in hospital settings for withholding life-sustaining procedures from the terminally ill. 2002 legislation provided additional protocols making it easier for EMT responders to determine when it is lawful to withhold these procedures in out-of-hospital situations.

COMMENTARY: With the consent of the patient or a legally responsible party the attending physician may issue a uniform “OOH DNR” (out-of-hospital do-not resuscitate) order, based on a form issued by the department; with this order in place responders, called to an out-of-hospital situation, can be assured that it is lawful to take no life-saving measures. The patient or legally responsible party may rescind consent at any time, but other persons, even family members, may not. Committee members were concerned how a legally responsible party could be ascertained, absent the formality of a durable power of attorney, and voted to request informal advise from the attorney general.

ACTION: No action taken.

REAL ESTATE COMMISSION, Fee reduction, 08-06-03 IAB, ARC 2673B, NOTICE.

BACKGROUND: The commission had previously raised licensee fees by \$50 with the assumption that 85% of that increase would be appropriated back to the agency as a funding increase. The legislature decline to appropriate that increase back to the commission.

COMMENTARY: The commission proposed to rescind the \$50 increase, reducing the fee to its' earlier level. Committee members explained to commission representatives the net result would be to reduced the general fund by over \$110,000 and that such a reduction was unacceptable at this time.

ACTION: Additional review likely if this provision is adopted in final form.

VETERANS HOME, Treatment of assets and income, SELECTIVE REVIEW.

BACKGROUND: In March the Veterans Home raised the amount of income and level of assets a veteran could retain. Amounts above that level are used by the home to help defray the costs of care.

COMMENTARY: The March revision put the actual income and asset policy above the level set in 801 IAC Chapter 10, Veterans Affairs Commission. The homes' commandant acknowledged and apologized for the rule-making error. He noted that the increase was the first in ten years and was still below the level set in Nebraska. The increase will cost the Home some \$300,000, which will be absorbed in the existing budget, no appropriation will be requested. ARRC staff did note that because of the unusual rulemaking situation, an emergency rule was needed to bring the rules up-to-date, and that the rule should itself state that benefits are retroactive to March 2003. Committee members raised no objection.

ACTION: No action taken